

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

WILLIAM EARL DAVIS,

Petitioner,

v.

WARDEN DEBORAH TONEY, et al.,

Respondents.

Case No. 5:18-cv-1617-RDP-SGC

MEMORANDUM OPINION

The Magistrate Judge entered a Report and Recommendation on May 25, 2021, recommending the court dismiss Petitioner William Earl Davis' petition for a writ of habeas corpus as successive pursuant to 28 U.S.C. § 2244(b)(3)(A). (Doc. 10). Although the Magistrate Judge advised Davis of his right to file objections to the Report and Recommendation within 14 days, the court has not received objections.


Having carefully reviewed and considered *de novo* all the materials in the court file, including the Report and Recommendation, the court **ADOPTS** the Magistrate Judge's Report and **ACCEPTS** her Recommendation. Davis' petition for a writ of habeas corpus is due to be dismissed without prejudice for lack of jurisdiction because he has not received authorization from the Eleventh Circuit to file a successive habeas petition. *See* 28 U.S.C. § 2244(b)(3)(A).

Generally, a petitioner seeking to appeal from § 2254 proceedings must first obtain a certificate of appealability ("COA"). *See* 28 U.S.C. § 2253(c). However, no COA is necessary to appeal a district court's dismissal of a successive habeas petition for lack of subject matter jurisdiction because such order is not a "final order in a habeas corpus proceeding." *Osbourne v. Sec'y, Fla. Dep't of Corr.*, 968 F.3d 1261, 1264 n.3 (11th Cir. 2020) (quoting 28 U.S.C. § 2253(c)(1)(A)); *see Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004)). Rather, the

dismissal is a “final decision” pursuant to 28 U.S.C. § 1291. *See Osbourne*, 968 F.3d at 1264 n.3.

The court will enter a separate order.

DONE and **ORDERED** this June 15, 2021.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE